

COP

Board of Supervisors County of Los Angeles

85-049-2

DEANE DANA
CHAIRMAN

May 14, 1984

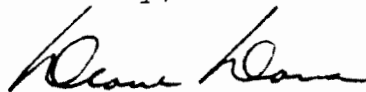
Mr. Dick R. Lynch
346 North Kenwood
Suite #4
Glendale, California 91206

Dear Mr. Lynch:

I received your letter concerning the Mechanical Department's Request for Proposal for consultant services in remanufacturing and rebuilding County vehicles. I have been advised by the Chief Administrative Office that all proposals were rejected due to certain flaws in the contracting process. It is my understanding that the Mechanical Department is currently re-evaluating its need to retain a consultant.

If it is later determined that consultant services in this area are needed, I have been assured that you will receive a copy of the Request for Proposal, and I know Los Angeles County will look forward to receiving a responsive proposal from you.

Sincerely,



DEANE DANA, Chairman
Board of Supervisors
Supervisor, 4th District

DD:js

MAY 16 1984

Dick R. Linch

COPY

346 NO. KENWOOD, SUITE 4
GLENDALE, CALIF. 91206
(213) 241.0061

STATE OF CALIFORNIA
REGISTERED PROFESSIONAL
ENGINEER NO. M 10233

May 21, 1984

The Honorable Deane Dana
Chairman, Board of Supervisors
822 Hall of Administration
Los Angeles, CA 90012

Supervisor Dana:

Thank you for your letter of May 14, 1984 (I find it interesting that it is the first written communication I have received, except for a letter from the Mechanical Department that was withdrawn within an hour, since the RFP of March 1, 1984).

I have been advised by Mr. Fallin, that the Mechanical Department is going to go-out-for-bid again, and that I will be asked to again submit my proposal.

I have been hoping all this engineering specification work could be done before we actually started rebuilding and putting Sheriff patrol vehicles on the streets, but I guess my admonishment not to jump the gun was futile.

I am told about seven or nine have been returned to service.

I look foreward to providing the information that will find exactly what should be specified before cars are put into service to prevent some personal injury attorney from making the claim that the County should have bought a new vehicle before rebuilding it and returning it to the streets--you may remember in my general write-up that I specified taking certain mechanical steps to insure that we are putting a safer vehicle on the streets than was originally provided by Detroit.

Sincerely,



Dick R. Linch

Dick R. Lynch
(818) 241-0061

January 30, 1985

In Re California Code, Section 1090

1. The proposal of July 15, 1983 from Dick Lynch to the Director of the Mechanical Department for rebuilding vehicles of the County fleet was a legal offer, to which there was no acceptance. Therefore, there was never a contract.
2. The invitation to submit a proposal for consulting services for rebuilding County vehicles, dated March 1, 1984, from the Mechanical Department, constituted an invitation to various consultants to submit a legal offer. However, the sole proposal submitted by Dick Lynch was never accepted. Therefore, there never was a contract.
3. Although Dick Lynch is a member of the L.A. County Productivity Advisory Committee (PAC), the matter of rebuilding vehicles; the proposals in "1." and "2." above; or any reference to "making" a contract (even in the broadest sense) has never been mentioned nor placed on the agenda of the PAC, which would be considered a "body or board" as used in Section 1090.
4. It is presently contemplated that another similar invitation to submit a proposal, or possibly a request for a bid to a specific set of requirements, will be issued to various consultants, including Dick Lynch; in which event, I submit that if the same conditions as set forth above apply, once again, there will be no conflict of interest if a contract between Dick Lynch and the L.A. County results.
5. The PAC, of which Dick Lynch is a member, will have no part, no responsibility, nor will it be in any way, manner, or way be involved in the matter of rebuilding County vehicles. It may issue a request for proposals (RFP) or a similar document regarding rebuilding County vehicles, but it is not to be involved in the matter. Therefore, there is no conflict of interest in the before mentioned the above items.

.....
Reference: Section 1090, in essential part, says:

...county ~~employees~~ shall not be financially interested in any ~~contract or agreement~~ made by the county, or by any body, ~~in which they are~~

.....
THE CASE IS REFERRED TO THE SUPERVISORS ON AUGUST 15, 1984, CONCERNING THE MECHANICAL DEPARTMENT TO USE A CONSULTANT TO CONDUCT THE REBUILDING PROGRAM.
.....



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

DE WITT W. CLINTON, COUNTY COUNSEL

February 12, 1985

(213) 974-1861

DRL COPY

FROM OFFICE
SUPERVISOR ANTONOVICH

FEB 14 1985

Honorable Michael D. Antonovich
Supervisor, Fifth District
Room 869 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: Correspondence From Dick Lynch -
Conflict of Interest and the
Productivity Supervisory Committee

Dear Supervisor Antonovich:

You have directed us to review the enclosed letter you received from Mr. Dick Lynch, and thereafter to meet with him and advise you of our recommendations.

The thrust of Mr. Lynch's letter was his concern over the opinion of this office that a legal conflict of interest would arise if the County were to award a contract to him for consulting and engineering services in furtherance of his proposal for the rebuilding and manufacturing of the County's vehicle fleet.

It is our recommendation, therefore, that no action with respect to the award of the contract to Mr. Lynch be undertaken; however, Mr. Lynch need not resign from the Committee, since resignation will not solve the problem.

Although it is true that he is entitled to receive bid solicitations and requests for proposals or quotations,

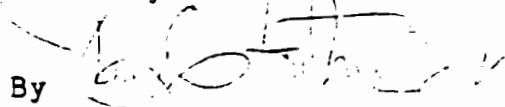
In our view, a person in Mr. Lynch's position cannot under current law serve on a body such as the County's Productivity Advisory Committee, and at the same time actively attempt to secure a contract with the County in which he is financially

It appears from Mr. Lynch's letter that the Los Angeles City Attorney has expressed similar legal concerns with regard to members of the Ad Hoc Productivity Advisory Committee of the City of Los Angeles who attempt to contract with the City during the terms of their membership.

The final issue raised by Mr. Lynch is whether or not resignation from the Committee will serve to obviate the conflict of interest problem. This proposition is not discussed in our previous opinions. However, in view of the fact that Mr. Lynch has had previous discussions with the County while a member of the Committee, and has in fact submitted proposals for the contract, resignation will not cure the problem (Stigall v. City of Taft (1943) 58 Cal. 2d 565, 570). We also are able to advise that although resignation will serve no such purpose, it is also true that resignation is unnecessary. ~~Mr. Lynch may remain on the Committee so long as the contract is not awarded to him.~~

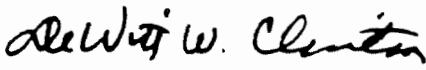
Very truly yours,

De Witt W. Clinton
County Counsel

By 
Raymond G. Fortner, Jr.
Acting Senior Assistant
County Counsel

RGF:rr
Encls.

APPROVED AND RELEASED


DE WITT W. CLINTON
County Counsel

JOHN H. LARSON
COUNTY COUNSEL
DONALD K. BYRNE
CHIEF DEPUTY

DEL -- COPY

OFFICE OF THE COUNTY COUNSEL

648 HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012

March 21, 1983 (213) 974-1850

EXCL ① OK 2/12/5

Honorable Michael D. Antonovich
Chairman, Board of Supervisors
869 Hall of Administration
Los Angeles, California

Attention: Joe Fallin, Deputy

Subject: Dick R. Lynch

Dear Supervisor Antonovich:

By memorandum dated February 12, 1983, Mr. Fallin of your staff has requested an opinion on the following question:

QUESTION

Would the listing of Dick R. Lynch or other members of the Productivity Advisory Committee in the County's Capability/Service Index create an unlawful conflict of interest?

Our opinion is as follows:

ANSWER

The individuals in question may lawfully be listed in the Capability/Service Index.

ANALYSIS

Facts.

The Capability/Service Index is a list of persons who are to be viewed as ~~potential recipients of contracts to supply various services to the County, including construction services.~~

The Productivity Advisory Committee advises the Board of Supervisors on productivity and work management in County government. (Los Angeles County Code Sections 3.51.020 and 3.51.110.) Its duties do not appear to involve advising on County contracts as such.

Mr. Lynch states in his letter of January 20, 1983, however, that he is increasingly consulted by County departments on "problems that have nothing to do with the specific activities and projects of our . . . committee."

Mr. Lynch would also like to serve as a consultant under contract with the County. He states that he has experience and expertise in about one-fourth of the 87 listed specialties for which the County hires consultants.

Application of Legal Principles

Government Code Sections 1090-1097 prohibit County officers and employees from being "financially interested" in contracts "made" by them or by bodies of which they are members, with certain exceptions described in Sections 1091 and 1091.5. In interpreting Section 1090, the courts have construed the word "made" so broadly now that anyone who advises, consults or recommends concerning entering into a contract is deemed, for conflict of interest purposes, to have participated in the "making" of the contract. (Millbrae Assn. for Residential Survival v. City of Millbrae (1968) 262 Cal. App. 2d 222, 237; Schaeffer v. Berinstein (1956) 140 Cal. App. 2d 278, 285.)

~~Thus, Section 1090, as applied by case law, prohibits the County from contracting with Mr. Lynch or any other member of the Productivity Advisory Committee regarding any matter coming before the committee.~~

A similar restriction is imposed by Government Code Section 87100, which provides that a County official may not attempt in any way to influence any County decision in which he should reasonably be aware that he has a financial interest.

~~_____~~

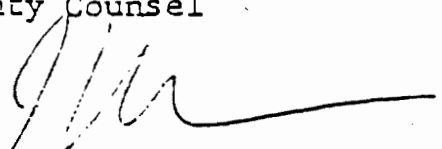
any County department or agency on any contract matter, we have no evidentiary basis for believing that Sections 1090-1097 or Section 87100 of the Government Code preclude Mr. Lynch or any other

[REDACTED]

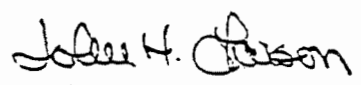
Very truly yours,

JOHN H. LARSON
County Counsel

By


JOE BEN HUDGENS, Principal
Deputy County Counsel

APPROVED AND RELEASED:


JOHN H. LARSON
County Counsel

JBH:vv



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

JUL 3 1984

DE WITT W. CLINTON COUNTY COUNSEL

June 1, 1984

(213) 974-1807

ENCL (2) 7/12/85

~~Mr. E. Davis, Jr.~~

~~Purchasing Agent~~

Purchasing & Stores Department
2500 South Garfield Avenue
City of Commerce, CA 90040

~~Supervisory Committee~~

Dear Mr. Davis:

~~_____~~ as to
whether a conflict of interest would exist if the County were to
~~_____~~
following factual statements are assumed to be true. These facts
are as follows:

1. The member used his position to obtain information material to the proposed contract which is not available to the general bidding public.
2. The member proposed, urged and shaped the contract, and also recommended that the proposed contract be let.
3. The member suggested that he would provide services on a sole source basis.
4. The member would personally profit if he received the proposed contract.

~~_____~~ we are of the opinion that a committee member would be in violation of state conflict of interest laws. Government Code Section 1090 prohibits County officers and employees from being "financially interested" in contracts "made" by them or by bodies of which they are members. In interpreting Section 1090, the courts have construed the word "made" so broadly now that anyone who advises, consults or recommends concerning entering into a contract is deemed, for conflict of interest purposes, to have participated in the

"making" of the contract. (Millbrae Assn. for Residential Survival (1968) 262 Cal.App.2d 222, 237; Schaeffer v. Berinstein (1956) 140 Cal.App.2d 278, 285.) Thus, Section 1090, as applied by case law, would prohibit the member from contracting with the County regarding any matter on which the member has advised, or in which he would be financially interested. The facts stated in paragraphs 2, 3 and 4, [REDACTED], would fall within the prohibitions of Section 1090.

A similar restriction is imposed by Government Code Section 87100, which provides that a County official may not attempt in any way to influence any County decision in which he should reasonably be aware that he has a financial interest. Your facts clearly suggest that the member knew or should have known that he was a potential bidder.

If we can be of any further assistance to you in this regard, please contact us.

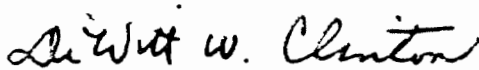
Very truly yours,

DE WITT W. CLINTON
County Counsel

By 
WILLIAM F. STEWART
Senior Assistant County Counsel

WFS:jae

[REDACTED]


DE WITT W. CLINTON
County Counsel

ORDINANCE NO. 12,351

An ordinance adding Article CXVII to Ordinance No. 4099, the Administrative Code, creating the Productivity Advisory Committee.

The Board of Supervisors of the County of Los Angeles do ordain as follows:

SECTION 1. Article CXVII is added to Ordinance No. 4099, entitled "Administrative Code of the County of Los Angeles," adopted May 19, 1942, to read as follows:

ARTICLE CXVII

PRODUCTIVITY ADVISORY COMMITTEE

Sec. 23000. CREATION. There is hereby created a Productivity Advisory Committee hereinafter referred to as the "Committee."

Sec. 23001. ~~THE COMMITTEE SHALL BE COMPOSED OF FIFTEEN (15) MEMBERS, SEVEN (7) OF WHOM SHALL BE APPOINTED BY THE BOARD OF SUPERVISORS AND EIGHT (8) SHALL BE APPOINTED BY THE CHAIRMAN OF THE BOARD OF SUPERVISORS.~~

Sec. 23002. MEMBERS. The Committee shall consist of fifteen (15) members appointed by the Board of Supervisors.

Sec. 23003. QUALIFICATIONS. The Board in appointing members to the Committee shall, insofar as possible, appoint members with special knowledge of productivity or related techniques.

Sec. 23004. TENURE. The members shall serve a one (1) year term subject to the right of the Board of Supervisors to remove a member at any time. Each member shall serve until his successor is duly appointed and qualifies.

Sec. 23005. VACANCIES. Upon a vacancy occurring in the Committee, and upon the expiration of the term of office of any member, a successor shall be appointed by the Board. When a vacancy occurs for any reason other than the expiration of a term of office, the appointee to fill such vacancy shall hold office for the unexpired term of his predecessor.

Sec. 23006. ~~THE BOARD OF SUPERVISORS SHALL HAVE THE RIGHT TO REMOVE ANY MEMBER OF THE COMMITTEE AT ANY TIME.~~

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ORDINANCE NO. 12,356

An ordinance amending Section 23002 of Ordinance No. 4099, the Administrative Code, enlarging the membership of the Productivity Advisory Committee.

SECTION 1. Section 23002 of Ordinance No. 4099, entitled "Administrative Code of the County of Los Angeles," adopted May 19, 1942, is amended as follows:

Sec. 23002. MEMBERS. The Committee shall consist of fifteen (15) members. Fifteen members shall be appointed by the Board of Supervisors, two of whom shall be the Chairman of the Board of Supervisors, the Federation of Labor, AFL-CIO, and the Executive Secretary-Treasurer of the Federation of Labor, AFL-CIO.

Section 2. This ordinance shall be published in METROPOLITAN NEWS, a newspaper printed and published in the County of Los Angeles.

SEAL
EDMUND D. EDELMAN, Chairman

ATTEST:
JAMES S. MIZE, Executive Officer Clerk of the Board of Supervisors of the County of Los Angeles.

I hereby certify that at its meeting of May 19, 1981, the foregoing was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes: Supervisors Peter F. Schabarum, Kenneth Hahn, Michael Antonovich and Edmund D. Edelman.

Noes: None.

SEAL
JAMES S. MIZE, Executive Officer Clerk of the Board of Supervisors of the County of Los Angeles.

Effective date: June 19, 1981.
G 30991 (750)

ORDINANCE NO. 81-0019

An ordinance amending Section 3.51.100 of the Los Angeles Administrative Code relative to compensation of members of the Productivity Advisory Committee.

The Board of Supervisors of the County of Los Angeles do ordain as follows:

Section 1. Section 3.51.100 of the Los Angeles Administrative Code is amended to read:

Section 3.51.100. COMPENSATION. The members of the Productivity Advisory Committee shall receive compensation of \$120 for attendance at committee meetings.

Section 2. This ordinance shall be published in METROPOLITAN NEWS, a newspaper printed and published in the County of Los Angeles.

SEAL
EDMUND D. EDELMAN, Chairman.

ATTEST:
JAMES S. MIZE, Executive Officer Clerk of the Board of Supervisors of the County of Los Angeles.

I hereby certify that at its meeting of October 20, 1981, the foregoing was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes: Supervisors Peter F. Schabarum, Michael D. Antonovich and Edmund D. Edelman.

Noes: None.

SEAL
JAMES S. MIZE, Executive Officer Clerk of the Board of Supervisors of the County of Los Angeles.

Effective date: November 20, 1981.
G51316 1501

Reprinted From:

Metropolitan News

Citation	Found Document	Rank 1 of 1	Database
CA FPPC Adv. A-85-050			CA-ETH
(Cite as: 1985 WL 291290 (Cal.Fair.Pol.Prac.Com.))			

California Fair Political Practices Commission

*1 DONALD J. FALLON, DEPUTY COUNTY COUNSEL
FPPC File No. A-85-050
June 6, 1985

LAFCO ANNEXATION AND SPECIAL DIST FORMATION PROCEEDINGS ARE COVERED;
INCORPORATIONS AND SPHERE OF INFLUENCE PROCEEDINGS ARE NOT COVERED.

18438.2, 84308

Donald J. Fallon
Deputy County Counsel
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice

Dear Mr. Fallon:

Thank you for your request for advice concerning the application of Government Code Section 84308 to a Local Agency Formation Commission ("LAFCO"). [FN1]
As you know, Section 84308 was amended last year by Chap. 1681, 1984 Stats. (AB 2992, effective 10/1/84). Previously Section 84308 applied only to quasi-judicial proceedings involving a license, permit or other entitlement for use. The term "quasi-judicial" was removed from the statute, and all proceedings involving a license, permit or other entitlement for use are now covered. Prior to the 1984 amendments, in its Curiel Opinion, 8 FPPC Opinions 1 (No. 83-003, Sept. 7, 1983), the Commission had determined that, while LAFCOs were not exempt from the coverage of Section 84308, [FN2] the types of proceedings conducted by LAFCOs had been traditionally termed "quasi legislative" by the courts and thus fell outside of Section 84308. Based on the statutory change, it is our conclusion that the Curiel Opinion is no longer relevant. Since the quasi judicial/quasi legislative distinction no longer applies, the issue is whether any of the types of proceedings conducted by LAFCOs involve a "license, permit or other entitlement for use" as that term is now defined. [FN3]

The term "entitlement for use" does not have a set legal meaning. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which

CA FPFC Adv. A-85-050

(Cite as: 1985 WL 291290, *1 (Cal.Fair.Pol.Prac.Com.))

should be covered are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants. Section 84308 does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse.

LAFCOs have the power to review and approve or disapprove, or approve conditionally, subject to certain limitations, the following:

1. The annexations of territory to cities or special districts;
2. The incorporations of cities;
3. The formation of special districts.

In addition, LAFCOs are required to adopt a "sphere of influence" plan for each local agency within the county which spells out the probable ultimate physical boundaries and service area of the agency. Section 54773, et seq. These plans are used as a factor in decisions on specific proposals.

1. Annexations.

Annexations (and deannexations) have been termed "entitlements for use" by the courts. See *People ex rel. Younger v. Local Agency Formation Com.* (1978), 81 Cal. App. 3d 464, 476; *Bozung v. Local Agency Formation Com.* (1975), 13 Cal. 3d 263, 268-279. In both of the cases, the question was whether an annexation proposal (deannexation in *Younger*) was a "project" within the meaning of the California Environmental Quality Act (Pub. Resources Code Section 21000, et seq.) which required an environmental impact report. [FN4] In *Bozung*, supra, the Supreme Court rejected the defendants' argument that LAFCO approval of a specific annexation proposal was more like a feasibility or planning study than the enactment or amendment of a zoning ordinance, since the express purpose of the proposal by Kaiser and the City of Thousand Oaks was to convert 677 acres of agricultural land into an urban subdivision. The Court held that, since annexation was an irrevocable necessary step, any annexation which could have a significant effect on the environment was a project covered by CEQA. 13 Cal. 3d at 278-279.

*2 Based on these authorities and in view of the purposes of Section 84308, it is our view that annexations (and deannexations) involve an "entitlement for land use" within the meaning of the law. Annexation is often a necessary step in the processing of large development projects where private financial interests are at stake. It is this type of proceeding where campaign contributions are often perceived as a means of purchasing influence over the decision that the law was intended to cover. Cf. *Woodland Hills Residents Assoc. v. City Council* (1981), 26 Cal. 3d 938.

2. Incorporations.

CA FPPC Adv. A-85-050

(Cite as: 1985 WL 291290, *2 (Cal.Fair.Pol.Prac.Com.))

Incorporation proceedings begin with the filing of an application by the proponents of the new city with the county. Notice is given, and a hearing is held before the county's LAFCO, which has the power to approve, amend, condition or disapprove the proposal. Section 54790, et seq. No petition for incorporation may be circulated or filed with the board of supervisors without LAFCO approval. [FN5] As the court noted in *Curtis v. Board of Supervisors* (1972), 7 Cal. 3d 942, the financial and political interests involved in an incorporation proceeding are varied and diverse, and the issues directly affect all of the people, businesses and property within the proposed city boundaries. Therefore, it is our conclusion that an incorporation is not an "entitlement for use" within the meaning of Section 84308, and the prohibition and disclosure/disqualifications requirements of Section 84308 do not apply to LAFCO members in incorporation proceedings.

3. Formation of Special Districts.

In *Curtis*, supra, the court distinguished between the incorporation of cities and the formation of special districts on the question of treating landowners differently from nonlandowners as follows:

In this connection respondents lay particular emphasis on special districts of limited powers, pointing to some 42 statutes which restrict the right to sign petitions or instruments of protest to landowners. We point out that for the most part these statutes involve special districts that cater to, and express, special interests. Our holding in the instant case pertains to the validity of a restricted franchise as to the formation of a city of general powers and does not necessarily apply to special districts, whose design, powers and methods of financing are more closely related to ownership of land. (Citation omitted.)

7 Cal. 3d at 960.

In those situations where a special district involves the creation of a special use or benefit to the persons in the district, the formation proceedings for the district are proceedings which involve an "entitlement for use" covered by Section 84308. It appears to us that water, irrigation and similar districts fall into this category,. On the other hand, the formation of school and cemetery districts do not create "entitlements for use" within the meaning of Section 84308. Thus whether Section 84308 applies to a special district formation proceeding depends on the type of district being formed. We will be happy to advise further on this point.

4. Adoption of "Sphere of Influence" Plans.

*3 "Sphere of influence" plans are general planning documents adopted by LAFCOs which are intended to guide them in their determination of specific proposals. It is our view that these types of general plans do not create any "entitlement

CA FPPC Adv. A-85-050

(Cite as: 1985 WL 291290, *3 (Cal.Fair.Pol.Prac.Com.))

for use" within the meaning of Section 84308. Thus "sphere of influence" proceedings are not covered by this law.

In summary, incorporation and "sphere of influence" proceedings before LAFCOs are not covered by Section 84308. Annexation proceedings are covered, and special district formation proceedings are covered only if the special district involves the creation of an entitlement for use.

Please feel free to contact me if I can be of further assistance.

Sincerely,

Diane Maura Fishburn
Staff Counsel
Legal Division

FN1. Government Code Section 84308 is a part of the Political Reform Act. All statutory references are to the Government Code.

FN2. The exemption for bodies whose members are directly elected by the voters remains the same in the statute as amended. LAFCOs are not exempt since the members are not directly elected.

FN3. Section 84308(a)(5) defines the term to include "all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises."

FN4. The CEQA guidelines provided that project included "[a]n activity involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies." 14 Cal. Adm. Code Section 15037(a)(3) (emphasis added).

FN5. After approval by LAFCO, petitions are circulated among residents within the proposed boundaries; after the requisite number of signatures is gathered, the board of supervisors holds a hearing, and, if all the requirement are met, calls an election on the incorporation.

END OF DOCUMENT